

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:)	NO. 17-13300-elf
MARY JANE DECEMBRINO)	Chapter 13
Debtor)	
)	
SANTANDER BANK, N.A.)	MOTION FOR STAY RELIEF
Movant)	133 Sunnyside Lane, Perkasie, PA
vs.)	
)	
MARY JANE DECEMBRINO)	
JOSEPH DECEMBRINO)	Hearing Date: <u>May 22, 2018</u>
Respondents)	Time: <u>9:30 a.m.</u>
)	Courtroom # <u>1</u>

MOTION OF SANTANDER BANK, N.A. FOR RELIEF FROM AUTOMATIC STAY

SANTANDER BANK, N.A. ("Santander Bank"), by and through its attorneys Gross McGinley LLP, respectfully submits the following Motion for Stay Relief pursuant to 11 U.S.C. 362(d) and 1301(c), and in support thereof alleges as follows:

1. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §157 and §1334, as well as 11 U.S.C. § 362 and 1301.
2. On or about May 9, 2017, MARY JANE DECEMBRINO ("Debtor") filed a Petition for Relief under Chapter 13 of the United States Bankruptcy Code.
3. By way of brief background, on or about November 24, 2007, Debtor and her husband Joseph Decembrino, obtained a Home Equity Line of Credit loan from Sovereign Bank in the principal amount of \$43,000.00 secured by a second mortgage upon Debtor's principal residence (owned jointly with his spouse, JOSEPH DECEMBRINO) known as 133 Sunnyside Lane, Perkasie, Bucks County, Pennsylvania ("Premises") as evidenced by a Home Equity Line of Credit Agreement and Open End Mortgage ("Loan Documents").
4. Santander Bank is a secured creditor with a mortgage lien upon the Premises.

5. On or about June 29, 2017, Santander Bank filed a Proof Claim (Claim #3) reflecting a pre-petition arrearage of \$6,020.09 and a total secured claim of \$42,992.64. The Proof of Claim and attachments thereto are incorporated herein by reference as though set forth herein at length.

6. Under Debtor's Amended Chapter 13 Plan (#22), Debtor agreed to cure the pre-petition arrears through her plan and make regular monthly post-petition installment payments outside of the Plan directly to Santander Bank per the Loan Agreement. Monthly installment payments of principal and interest presently are \$276.66, but vary monthly.

7. In breach of the Loan Documents and proposed Amended Chapter 13 Plan, Debtor has not made required installment payments to Santander Bank and is due for the months of January, 2018 through April, 2018 totaling **\$1,134.53**, exclusive of late charges, additional attorneys' fees and costs for this Motion.

8. Santander Bank had not commenced a foreclosure action against the Premises prior to this bankruptcy proceeding.

9. Pursuant to the terms of the Loan Documents, as of April 12, 2018, the debt owed to Santander Bank totals \$42,045.01, together with per diem interest of \$4.33, along with fees and costs recoverable under the Loan Documents.

**Santander Bank is entitled to Relief from
the Automatic Stay Pursuant to 11 U.S.C. Sections 362(d) and 1301(c)**

10. Pursuant to 11 U.S.C. Sections 362(d)(1) and 1301(c), Santander Bank is entitled to relief from the automatic stay for sufficient cause, including the lack of adequate protection of Santander Bank's interests in the Premises in that:

a) the interests of Santander Bank are not adequately protected by reason of the Debtor's failure to make post-petition payments due under the Loan Documents and Debtor's proposed Amended Chapter 13 Plan, since January 2018 to the present and the value of the Premises is static or decreasing while the unpaid real estate taxes and liens upon or affecting the Premises continue to increase. Respondents both received the

consideration for the claim held by Movant and Movant would be irreparably harmed by continuation of the stay.

WHEREFORE, Santander Bank requests:

- a) that the automatic stay issued pursuant to 11 U.S.C. Sections 362 and 1301 be modified to allow Santander Bank to pursue all available Pennsylvania State court remedies against the Premises, including without limitation, foreclosure upon and sheriff sale of the Premises, and
- b) such other additional relief as may be equitable and just under the circumstances.

Respectfully Submitted,

GROSS McGINLEY LLP

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